



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2013-1063]

RIN 1625-AA11

Regulated Navigation Area; Arthur Kill, NY and NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking

---

SUMMARY: The Coast Guard is proposing to establish a Regulated Navigation Area (RNA) on the navigable waters of the Arthur Kill in New York and New Jersey from December 2014 through October 2018. This proposed rule would allow the Coast Guard to enforce speed and wake restrictions and prohibit vessel traffic through the RNA during bridge replacement operations on the Goethals Bridge, both planned and unforeseen, that could pose an imminent hazard to persons and vessels operating in the area. This proposed rule would also allow the Coast Guard to enforce navigation restrictions and prohibit vessel traffic during drilling, blasting, and dredging operations in support of the U.S. Army Corps of Engineers channel deepening project. This proposed rule is necessary to provide for the safety of life in the regulated area during construction on the Goethals Bridge and the channel deepening project.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Requests for public meetings must be received by the Coast Guard on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: (202) 493-2251.

(3) Mail or Delivery: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is (202) 366-9329.

See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail BMC Craig D. Lapiejko, First Coast Guard District, telephone (617) 223-8351, e-mail

[Craig.D.Lapiejko@uscg.mil](mailto:Craig.D.Lapiejko@uscg.mil), or LT Hannah Eko, Sector New York

Waterways Management, U.S. Coast Guard; telephone (718) 354-4114, e-mail [hannah.o.eko@uscg.mil](mailto:hannah.o.eko@uscg.mil). If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

#### A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

##### 1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at <http://www.regulations.gov>, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that

you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number [USCG-2013-1063] in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

## 2. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number (USCG-2013-1063) in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590,

between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

### 3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

### 4. Public meeting

We do not now plan to hold a public meeting. But you may submit a request for one on or before [INSERT DATE 21 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER], using one of the methods specified under ADDRESSES. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

### B. Basis and Purpose

Under the Ports and Waterways Safety Act, the Coast Guard has the authority to establish RNAs in defined water areas that are hazardous or in which hazardous conditions are determined to exist. See 33 U.S.C. 1231 and Department of Homeland Security Delegation No. 0170.1.

The purpose of this proposed rulemaking is to provide for safety on the navigable waters in the regulated area and is

prompted by dredging and bridge construction activities in the Arthur Kill.

### C. Discussion of Proposed Rule

The Coast Guard proposes to establish a Regulated Navigation Area (RNA) on the navigable waters of the Arthur Kill. This RNA would encompass the Arthur Kill from Port Ivory to the charted Graselli High Wires north of Pralls Island. The proposed RNA would be in effect from December 2014 through October 2018, and enforced at intermittent periods during that time.

Dredging activities will resume in a portion of the Arthur Kill from December 2014 until December 2015. These activities may potentially involve drilling and underwater blasting of bedrock in the Arthur Kill navigable channel. Dredging operations may encroach on portions of the navigable channel, require the relocation of lateral aids to navigation, and create a reduction in the width of the navigational channel. While most activities within the scope of this project will not require waterway closures, there are certain tasks that can only be completed via closing the waterway.

The Goethals Bridge spans the Arthur Kill at mile 11.5. The current structure of the Goethals Bridge will be replaced with a twin span south of the existing bridge. Work on the bridge commenced in December 2013. New eastbound bridge construction is expected to be undertaken from January 2013 to December 2016. New westbound construction is expected to occur from April 2013

to December 2017. Substantial completion of both bridges is expected to occur in December 2017 with both bridges open at this point. Demolition of the main span of the currently existing bridge is expected to occur in the December 2016 to October 2018 timeframe. The minimum vertical clearance of the bridge is expected to be reduced from 139.9' to 137.9'.

Currently, it is unknown whether explosives will be utilized for demolition purposes or whether the current span will be lowered in increments into barges placed in the Arthur Kill. Final completion of the bridge project is expected to occur in October 2018.

This proposed rule seeks to enhance navigational safety and marine environmental protection, promote vessel movement by reducing the potential for collisions, groundings, and the loss of lives and property, and ensure the safety of vessels and workers from hazards associated with bridge construction operations in the regulated area.

The Captain of the Port (COTP) New York will cause notice of enforcement and suspension of enforcement to be made by all appropriate means to affect the widest distribution among the affected segments of the public. Such means of notification may include, but are not limited to, Broadcast Notice to Mariners, Local Notice to Mariners, or notices on the Homeport website.

#### D. Regulatory Analyses

We developed this proposed rule after considering numerous

statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

Although this proposed rule may restrict access to a small portion of the Arthur Kill during some drilling, blasting and some bridge demolition operations, the effect of this regulation would not be significant for the following reasons: the regulated navigation area would be enforced during limited intervals of time. We expect portions of the RNA to be activated for short period while drilling, blasting, or bridge demolition procedures occur. In addition, vessels may be authorized to enter the zone with permission of the COTP. In addition, advance notification for closures will be made via Local Notice to Mariners, Broadcast Notice to Mariners, and at the Homeport website.



## 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Arthur Kill from December 2014 to October 2018.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons: although the regulated navigation area would apply to the entire width of the river, vessel traffic would be allowed to pass through the regulated navigation area by requesting permission from the COTP. Before the activation of the regulated navigation area, we would issue maritime advisories widely available to users of the river.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that

this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

### 4. Collection of Information

This proposed rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this

proposed rule under that Order and determined that this rule does not have implications for federalism.

#### 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### 7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### 8. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### 9. Civil Justice Reform

This proposed rule meets applicable standards in sections

3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### 10. Protection of Children from Environmental Health Risks

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

#### 11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### 12. Energy Effects

This proposed rule is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

#### 13. Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### 14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves the establishment of a regulated navigation area. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

#### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as

follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T01-1063 to read as follows:

§ 165.T01-1063 Regulated Navigation Area; Arthur Kill, NY and NJ.

(a) Regulated Area. The following area is a regulated navigation area: all waters from Port Ivory to Graselli High Wires north of Pralls Island in the Arthur Kill; bounded in the northeast by a line drawn from position 40° 38'43.260"N, 074° 10'47.208"W; to a point in position 40°38'52.152"N, 074° 10'47.748"W; and bounded in the southwest by a line drawn from position 40° 37'8.940"N, 074° 12'19.116"W; to a point in position 40° 37'03.252"N, 074° 12'02.052"W. All geographic coordinates are North American Datum of 1983 (NAD 83).

(b) Effective Dates and Enforcement Periods. This rule is effective from 8:00 a.m. on December 1, 2014 until 5:00 p.m. on October 31, 2018. This rule will be enforced upon notice by the Captain of the Port (COTP) New York or the COTP's designated representative.

(c) Regulations.

(1) The general regulations contained in §§ 165.10, 165.11, and 165.13 apply.

(2) In accordance with the general regulations, entry into,

anchoring, or movement within the RNA, during periods of enforcement, is prohibited unless authorized by the COTP or the COTP's designated representative.

(3) During periods of enforcement, entry and movement within the RNA is subject to a ``Slow-No Wake`` speed limit. Vessels may not produce more than a minimum wake and may not attain speeds greater than three knots unless a higher minimum speed is necessary to maintain steerageway when traveling with a strong current. In no case may the wake produced by the vessel be such that it creates a danger of injury to persons, or damage to vessels or structures of any kind.

(4) During periods of enforcement, upon being hailed by a Coast Guard vessel by siren, radio, flashing light or other means, the operator must proceed as directed.

(5) Vessel operators desiring to enter or operated within the regulated area when it is closed shall contact the COTP or

the designated on-scene representative via VHF channel 16 or (718) 354-4353 (Sector New York Command Center) to obtain permission.

(6) Vessel Movement Reporting System (VMRS) users are prohibited from meeting or overtaking other vessels when transiting alongside an active work area where dredging and drilling equipment are being operated.

(7) Notwithstanding anything contained in this section, the Rules of the Road (33 CFR Chapter I, Subchapter E, part 83-90 inland navigation rules) are still in effect and must be strictly adhered to at all times.

Dated: March 25, 2014

V.B. Gifford  
Captain, U.S. Coast Guard  
Acting Commander, First Coast Guard District

[FR Doc. 2014-08233 Filed 04/11/2014 at 8:45 am; Publication Date: 04/14/2014]